Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

SIERRA MEDICAL CENTER,

Petitioner,

v.

KENNETH D. CRONIN and BRIGITTE CRONIN,
husband and wife,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE STATE OF NEW MEXICO

PETITION FOR A WRIT OF CERTIORARI

YVONNE K. PUIG
AKIN, GUMP, STRAUSS,
HAUER & FELD, LLP
816 Congress Avenue
Suite 1900
Austin, Texas 78701
(512) 499-6200

JACK CHAPMAN
Counsel of Record
CYNTHIA S. ANDERSON
KEMP SMITH, P.C.
221 North Kansas
Suite 1700
El Paso, Texas 79901
(915) 533-4424

Attorneys for Petitioner

164514

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the Fourteenth Amendment Due Process Clause prohibits the State of New Mexico from exercising personal jurisdiction over a Texas hospital.

PARTIES TO THE PROCEEDING

Petitioner is Tenet Hospitals Ltd., a Texas Limited Partnership d/b/a Sierra Medical Center ("Sierra Medical Center" or the "Hospital"), a defendant-appellee below.

Additional defendant-appellees who were parties to the proceeding in the court whose judgment is sought to be reviewed, but who are not before this Court, include El Paso Southwestern Cardiovascular Assoc., Kenneth Eisenberg, M.D., Jerry W. Miller, M.D., Felice Bruno, M.D. and Joe Kidd, M.D.

Respondents are Kenneth D. Cronin and Brigitte Cronin.

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Petitioner respectfully requests a writ of certiorari to review the judgment of the Court of Appeals for the State of New Mexico in this case.

OPINIONS BELOW

The New Mexico Court of Appeals opinion (App. A) is reported at *Cronin v. Sierra Medical Center*, 10 P.3d 845 (N.M. Ct. App. 2000), *cert. denied*. The district court judgment (App. B) is unpublished.

STATEMENT OF JURISDICTION

The Court of Appeals for the State of New Mexico entered its judgment on June 19, 2000 and denied Sierra Medical Center's motion for rehearing on August 3, 2000. The New Mexico Supreme Court denied Sierra Medical Center's petition for writ of certiorari on September 13, 2000, and denied the Hospital's timely motion for rehearing on October 11, 2000. (App. D). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment to the United States Constitution which provides: ". . . [n]or shall any state deprive any person of life, liberty or property, without due process of law. . . ."

STATEMENT OF CASE

Mr. Cronin, a New Mexico resident, voluntarily traveled to Texas and was admitted by his attending physician, a Texas resident, to Sierra Medical Center, a hospital whose

only facility is located in El Paso, Texas. He later brought a medical malpractice action in New Mexico state court against several health care providers residing in Texas and New Mexico. The Texas defendants included the Hospital and several physicians. Each of the Texas defendants sought and obtained from the trial court an order of dismissal for want of personal jurisdiction under the Fourteenth Amendment Due Process Clause.[1]

The Court of Appeals for the State of New Mexico affirmed the dismissal with respect to the physician defendants, but reversed with respect to the Hospital.[2] Finding that the Cronin's causes of action "lie within the wake of [the] Hospital's intentional, purposeful and persistent transaction of business in New Mexico[,]"[3] the Court of Appeals based the assertion of personal jurisdiction over Sierra Medical Center on three factors: (1) the Hospital placed yellow page listings in New Mexico telephone directories; (2) television commercials placed by the Hospital in El Paso, Texas could be viewed by cable television subscribers in New Mexico; and (3) Mr. Cronin relied in part on the recommendations of his New Mexico coworkers in selecting Sierra Medial Center.[4]

The New Mexico Supreme Court denied both the Hospital's petition for writ of certiorari[5] and its motion for rehearing.[6]

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1. App. B.
2. App. A.
3. *Id.* at pp. 3-4.
4. *Id.* at p. 4.
5. App. C.
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REASONS FOR GRANTING THE WRIT

A Writ of Certiorari is Warranted Because New Mexico's Assertion of Personal Jurisdiction Over Sierra Medical Center Violates the Fourteenth Amendment Due Process Clause.

The constitutional touchstone of due process analysis is whether the defendant has "certain minimum contacts with [the forum] such that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "[7] Although it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts, the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction.[8] Rather, "the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there."[9] In determining when a potential defendant should "reasonably anticipate" out-of-state litigation, the Court has held that:

> The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum

7. *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 85 L. Ed. 278, 615 S. Ct. 339 (1940)).

8. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295, 62 L. Ed. 2d 490, 100 S. Ct. 559 (1980).

9. *Id.* at 297, 62 L. Ed. 2d 490, 100 S. Ct. 559.

> State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.[10]

This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts,[11] or of the "unilateral activity of another party or a third person."[12] Jurisdiction is only proper where the contacts proximately result from actions by the defendant itself that create a "substantial connection" with the forum State.[13]

Once it has been determined that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal

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10. *Hanson v. Denkla*, 357 U.S. 235, 253, 2 L. Ed. 2d 1283, 78 S. Ct. 1228 (1958).

11. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 79 L. Ed. 2d 790, 104 S. Ct. 1473 (1984); *World-Wide Volkswagen Corp.*, 444 U.S. at 299.

12. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 417, 80 L. Ed. 2d 404, 104 S. Ct. 1868 (1984).

13. *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 2 L. Ed. 2d 223, 78 S. Ct. 199 (1957); *see also Kulko v. California Superior Court*, 436 U.S. 84, 94 n.7, 56 L. Ed. 2d 132, 98 S. Ct. 1690 (1978).

jurisdiction would comport with "fair play and substantial justice."[14] Thus, courts in "appropriate case[s]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies."[15]

Applying these principles to the case at hand leads to the inescapable conclusion that New Mexico's assertion of personal jurisdiction over Sierra Medical Center offends due process.

A. Sierra Medical Center did not purposefully avail itself of the privilege of conducting activities in New Mexico.

The Court has repeatedly explained that:

> When a corporation purposefully avails itself of the privilege of conducting activities within the forum State . . . it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.[16]

Here, the New Mexico Court of Appeals premised personal jurisdiction over Sierra Medical Center on three factors:

14. *International Shoe Co.*, 326 U.S. at 320.

15. *World-Wide Volkswagen Corp.*, 444 U.S. at 292.

16. *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 110, 94 L. Ed. 2d 92, 107 S. Ct. 1026 (1987) (quoting *Hanson v. Denkla*, 357 U.S. at 253, 2 L. Ed. 2d 1283, 78 S. Ct. 1228) (internal quotation omitted)).

(1) the Hospital placed yellow page listings in New Mexico telephone directories; (2) television commercials placed with local channels in El Paso, Texas, could be viewed by cable television subscribers in New Mexico;[17] and (3) Mr. Cronin relied in part on the recommendations of his New Mexico coworkers in selecting Sierra Medical Center. None of these factors, however, gave the Hospital clear notice that it could be subject to suit in New Mexico. Moreover, the second and

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17. The Hospital's sworn answers to interrogatories specifically stated that for the period inquired into by the Cronins, "Defendant [had] not placed any television ads in Southern New Mexico." Further, at the hearing on the Hospital's motion to dismiss, counsel for Sierra Medical Center explained the following:

> We responded under oath that we would provide all the ads that we have in the state of New Mexico. And there has been a vague reference here that we did not supply television advertising or other advertising that solicited New Mexico residents.
>
> Your Honor, I will state for the court, we didn't supply it because it doesn't exist. We advertise in El Paso, Texas. Now, can somebody with cable service sitting in Las Cruces be able to pick up channel nine and channel seven? Yes.
>
> Do we pay for that right? No.
>
> Do we direct it to Las Cruces? No.
>
> Do we have advertising agencies in New Mexico who carry the account of Sierra Medical Center? The answer is, absolutely not, your Honor.

[Tr. 20].

third factors are based on the unilateral activities of third parties over whom the Hospital had no control. By asserting jurisdiction based on these factors, the New Mexico Court of Appeals even precludes the Hospital from severing its connection with the State.

1. A Texas Hospital does not purposefully avail itself of the privilege of conducting activities in New Mexico by providing medical care in its own forum.

New Mexico courts have long recognized that a health care provider does not establish minimum contacts or purposefully avail itself of the privilege of conducting activities in New Mexico by providing medical care in its own forum to a New Mexico patient.[18] In a case directly on point, *Tarango v. Pastrana*,[19] a New Mexico couple brought suit in New Mexico state court against another El Paso, Texas hospital, Providence Memorial, and three doctors. They alleged that the doctors negligently performed a tubal ligation on Mrs. Tarango at the El Paso hospital, and as a result Mrs. Tarango became pregnant and gave birth to a child in New Mexico. The trial court granted the hospital's motion to dismiss for want of personal jurisdiction, and the Court of Appeals for the State of New Mexico affirmed, explaining as follows:

> In the case of personal services focus must be on the place where the services are rendered, since this is the place of the receiver's (here the patient's) need.

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18. *See Valley Wide Health Serv., Inc. v. Graham*, 106 N.M. 72, 738 P.2d 1316 (N.M. 1987); *Tarango v. Pastrana*, 94 N.M. 727, 616 P.2d 440 (N.M. Ct. App. 1980); *Beh v. Ostergard*, 657 F. Supp. 173 (D.N.M. 1987).

19. 94 N.M. 727, 616 P.2d 440 (N.M. Ct. App. 1980).

> The need is personal and the services rendered are in response to the dimensions of that personal need. They are directed to no place but to the needy person herself. It is the very nature of such services that their consequences will be felt wherever the person may choose to go. However, the idea that tortious rendition of such services is a portable tort which can be deemed to have been committed wherever the consequences foreseeably were felt is wholly inconsistent with the public interest in having services of this sort generally available. The scope of medical treatment should be defined by the patient's needs, as diagnosed by the doctor, rather than by geography. This focus on the provision of medical services in the location where they are needed leads to the conclusion that the exercise of *in personam* jurisdiction in this situation would be unreasonable.[20]

The New Mexico Court of Appeals further noted that:

> When one seeks out services which are personal in nature, such as those rendered by attorneys, physicians, dentists, hospitals or accountants, and travels to the locality where he knows the services will actually be rendered, he must realize that the services are not directed to impact on any particular place, but are directed to the needy person himself. While it is true that the nature of such services is that if they are negligently done, their consequences will thereafter be felt wherever the client or patient may go, it would be fundamentally unfair to permit

20. *Id.* at 729 (quoting *Wright v. Yackley*, 459 F.2d 287, 289 (9th Cir. 1972)).

> a suit in whatever distant jurisdiction the patient may carry the consequences of his treatment, or the client the consequences of the advice received.
>
> Unlike a case involving voluntary interstate or international economic activity . . . which is directed at the forum state's markets, the residence of a recipient of personal services rendered elsewhere is irrelevant and totally incidental to the benefits provided by the defendant at his own location. It is clear that when a client or a patient travels to receive professional services without having been solicited (which is prohibited by most professional codes of ethics), then the client, who originally traveled to seek services apparently not available at home, ought to expect that he will have to travel again if he thereafter complains that the services sought by him in the foreign jurisdiction were therein rendered improperly.
>
> Any other rule would seem to be not only fundamentally unfair, but would inflict upon the professions the obligation of traveling to defend suits brought in foreign jurisdictions, sometimes very distant jurisdictions, there brought solely because the patient or client upon his return to his own home decided to sue at home for services sought by himself abroad.[21]

This case presents same facts to the same court that decided *Tarango*. It is axiomatic that the result in the two cases should be the same.

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21. *Tarango*, 94 N.M. at 729-30 (quoting *Gelineau v. New York Univ. Hosp.*, 375 F. Supp. 661, 667 (D.N.J. 1974)).

2. The Hospital did not solicit the Cronins, and its telephone directory listings make clear that a New Mexico resident seeking treatment at Sierra Medical Center will have to leave New Mexico and travel to Texas.

In support of its conclusion that the Hospital's New Mexico telephone directory listings support the exercise of personal jurisdiction in New Mexico, the Court of Appeals relied on *Kathrein v. Parkview Meadows, Inc.*,[22] and *Frazer v. McGowan*.[23] That reliance, however, is entirely misplaced.

Kathrein is clearly distinguishable because that case involved *direct solicitation* in New Mexico by an out of state facility. First, the nonresident facility contacted the Albuquerque affiliate of the National Council on Alcoholism to solicit the referral of patients to the treatment center, and the plaintiff's husband was treated at the facility. Second, Mrs. Kathrein herself received a letter inviting her to attend a "Family Week" as part of her husband's treatment, as well as a follow-up call to encourage her attendance. Because of these *direct solicitations*, Mrs. Kathrein attended the Family Week in Arizona, as a result of which she suffered personal injury.[24] Here, however, the Hospital did not directly solicit the Cronins. It merely placed listings in New Mexico telephone directories.[25] These listings

22. *Kathrein v. Parkview Meadows, Inc.*, 102 N.M. 75, 76, 691 P.2d 462, 463 (N.M. 1984).

23. *Frazer v. McGowan*, 502 A.2d 905, 909-10 (Conn. 1986).

24. *Kathrein*, 102 N.M. at 76.

25. In a similar case, the Fourth Circuit held that a Georgia hospital's yellow page listings did not constitute purposeful contacts with the forum state of South Carolina. *See Wolf v. Richmond County*

(Cont'd)

provide *only* an El Paso, Texas address and telephone number. *Id.* Hence, it is clear that a New Mexico resident seeking treatment at Sierra Medical Center will have to leave New Mexico and travel to Texas. Indeed, Mr. Cronin did exactly that.

The New Mexico Court's reliance on *Frazer v. McGowan*, *supra*, is likewise misplaced because the Rhode Island hospital in that case had significant contacts with the forum state of Connecticut. Thirteen physicians with admitting privileges at the hospital had offices in Connecticut, and the hospital knew that eleven of them had offices only in Connecticut. During the relevant time period, 35.3 percent of the patients discharged from the hospital were Connecticut residents. The court concluded that the hospital took affirmative measures to solicit Connecticut patients because, under Connecticut law, a hospital can solicit by setting up an organizational network that is likely to prompt a significant number of Connecticut patients to seek treatment at that hospital. The record in this case, however, contains no evidence of any such organizational network. Indeed, none of the Texas physician defendants in this case was even licensed to practice medicine in New Mexico.[26]

(Cont'd)

Hospital Authority, 745 F.2d 904, 905 (4th Cir. 1984). The Court, however, distinguished cases similar to *Kathrein*, where the hospital actively solicited or encouraged the nonresident patient to travel to its facility. *Id.* at 912.

26. Mr. Cronin claims he selected Sierra Medical Center as the hospital at which to undergo cardiac bypass surgery based on telephone directory listings, television commercials and the recommendations of New Mexico coworkers. Even so, he did not,

(Cont'd)

3. The cable television technology that enabled the Cronins to access Sierra Medical Center's local advertising should not vitiate the Hospital's federal due process rights.

The New Mexico Court of Appeals asserted jurisdiction over Sierra Medical Center in part because New Mexico cable subscribers could pick up the local El Paso channels carrying the Hospital's advertisements. The Hospital's television commercials, however, were neither *placed* in New Mexico markets nor *targeted* at New Mexico residents. Rather, modern technology enabled the Cronin's cable company to capture a commercial deliberately placed only in El Paso, Texas and broadcast it in New Mexico, and for that matter, in any other jurisdiction to which its network extends.

Lower federal courts have consistently held that advertising that *appears* in the forum state, but that is not *targeted* at the forum residents, cannot support personal jurisdiction over a nonresident defendant under federal due process analysis.[27] Contrary to those courts, the Court of

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(Cont'd)
and could not, simply present to the Hospital for surgery. Rather, like all surgery patients, he had to be admitted to Sierra Medical Center by a physician licensed to practice medicine in Texas to whom the Hospital had granted both admitting privileges and credentials to perform the surgery.

27. *See Pedelahore v. Astropark, Inc.*, 745 F.2d 346, 349 (5th Cir. 1984); *Butler v. Beer Across America*, 83 F. Supp. 2d 1261, 1266 (N.D. Ala. 2000); *Decker v. Circus Circus Hotel*, 49 F. Supp. 2d 743, 749 (D.N.J. 1999); *International Star Registry of Illinois v. Bowman-Haight Ventures, Inc.*, No. 98 C 6823, 1999 U.S. Dist. (Cont'd)

Appeals for the State of New Mexico premised jurisdiction of Sierra Medical Center on the mere presence of its television commercials in the forum. Taken to its logical conclusion, that premise would support nationwide, and perhaps global, jurisdiction over any business that advertises on a local channel carried by Direct TV. Such technology based jurisdiction would be geographically indeterminate.

The Court of Appeals for the District of Columbia recently addressed the issue of geographical indeterminacy in the context of the Internet and concluded that "the advent of advanced technology . . . should not vitiate long-held and inviolate principles of federal jurisdiction."[28] Rather, the D.C. Circuit recognized that: "The Due Process Clause exists, in part, to give 'a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.' "[29]

(Cont'd)

Lexis 7009 at *14 (N.D. Ill. 1999) (citing *ESAB Group, Inc. v. Centricut, LLC*, 34 F. Supp. 2d 323, 331 (D.S.C. 1999), *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418-19 (9th Cir. 1997), *SF Hotel Co. v. Energy Investments*, 985 F. Supp. 1032, 1035-36 (D. Kan. 1997), and *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 301 (S.D.N.Y 1996)); *Addy v. Club Med*, Civ. No. 95-0035, 1997 U.S. Dist. Lexis 839 at *4 (E.D. La. 1997); *Driscoll v. Matt Blatt Auto Sales*, Civ. No. 95-5314, 1996 U.S. Dist. Lexis 4153, 13 (E.D. Penn. 1996); *Holmes v. TV-3, Inc.*, 141 F.R.D. 692, 694-95 (W.D. La. 1991).

28. *GTE New Media Serv. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000).

29. *Id.* citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297, 62 L. Ed. 2d 470, 100 S. Ct. 559.

"In the context of the Internet," the Court reasoned, "GTE's expansive theory of jurisdiction would shred these constitutional assurances out of practical existence."[30]

Likewise, here, the cable technology that enabled the Cronins to access the Hospital's local television advertising should not vitiate the Hospital's federal due process rights. The New Mexico Court of Appeals' expansive theory of jurisdiction based on local advertising, virtually shreds these constitutional assurances out of existence.

4. The recommendations of Mr. Cronin's New Mexico coworkers are unilateral acts of third parties and therefore cannot form the basis of personal jurisdiction.

The New Mexico Court's third basis for exercising jurisdiction over the Hospital was that Mr. Cronin claimed he underwent surgery at Sierra Medical Center based on the recommendations of his New Mexico coworkers. Hence, the Court unconstitutionally exercises jurisdiction based on the unilateral acts of third parties.[31]

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30. *Id.*

31. *See Hanson v. Denkla*, 357 U.S. 235, 253, 2 L. Ed. 2d 1283, 78 S. Ct. 1228 (1958).

B. The Cause of Action in This Case Neither Arose From Nor Related to the Hospital's Contacts With the Forum State.

Specific jurisdiction[32] analysis further requires the court to establish that the cause of action "arise from or relate to" the defendant's contacts with the forum state.[33] Because the "arise from or relate to" requirement defines the necessary relationship between the forum state and the defendant, it "is the essence of specific jurisdiction."[34] The contacts on which the Court of Appeals based personal jurisdiction over Sierra Medical Center consisted of general advertising in the form of yellow page listings and television commercials. The Cronins, however, do not allege that the Hospital's limited advertising in New Mexico was faulty or in any way contributed to Mr. Cronin's alleged injuries. Rather, their causes of action against the Hospital, if any, arise solely out of Mr. Cronin's admission as a patient in El Paso, Texas.

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32. "Specific" jurisdiction contrasts with "general" jurisdiction, pursuant to which "a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. at 414 n.9, 80 L. Ed. 2d 404, 104 S. Ct. 1868; *see also Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 96 L. Ed. 485, 72 S. Ct. 413 (1952).

33. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985) (stating that exercise of specific jurisdiction is proper where litigation "arises out of or relates to" defendant's forum activities) (quoting *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 414).

34. Mark M. Maloney, Note *Specific Personal Jurisdiction and the "Arise From or Relate To" Requirement . . . What Does it Mean?*, 50 Wash. & Lee L. Rev. 1265, 1271 (1993).

Therefore, the cause of action does not arise from or relate to the Hospital's contacts with New Mexico.

C. The Exercise of Personal Jurisdiction Over Sierra Medical Center by a New Mexico Court Would be Fundamentally Unfair.

Once it has been determined that a defendant purposefully established minimum contacts with the forum state, the contacts may be considered in light of other factors to determine the reasonableness of requiring the defendant to litigate in the forum state. Thus in "appropriate case[s]," courts may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and "the shared interests the several States in furthering fundamental substantive social policies."[35]

Because Sierra Medical Center lacked the necessary minimum contacts with New Mexico to satisfy due process, the Court need not reach the fairness factors set forth above. If, however, the fairness factors were considered, they would militate against the exercise of personal jurisdiction over the Hospital. Mr. Cronin twice left New Mexico and traveled to Texas in order to be admitted to Sierra Medical Center. Having done so, he ought to expect that he will have to travel again if he complains that the health care sought by him and delivered at the Hospital in El Paso, Texas, was rendered improperly. Any other rule would unfairly inflict on the

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35. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 292, 62 L. Ed. 2d 490, 100 S. Ct. 559.

Hospital the burden of traveling to defend suits in foreign jurisdictions based on conduct which by its very nature can only occur in El Paso, Texas. Moreover, because the Texas physician defendants have been dismissed from the case for want of personal jurisdiction, there would be no way to guarantee their participation in a trial held in New Mexico. Accordingly, the burden on the defendant could be severe because the Hospital's ability to put on a defense may be jeopardized. Moreover, except for the Cronins themselves, all the witnesses and evidence related to Mr. Cronin's hospitalization are located in El Paso, Texas. Therefore, the plaintiffs' interest in obtaining convenient and effective relief and the interstate judicial system's interest in obtaining the most efficient resolution of controversies also weigh against New Mexico jurisdiction. Finally, the shared interest of the several states in furthering the fundamental social policy of ensuring the availability of quality health care to their residents militates against New Mexico jurisdiction in this case.

CONCLUSION

For the reasons and based on the authorities set forth above, Sierra Medical Center respectfully requests that the Court grant its petition for writ of certiorari.

Respectfully submitted,

YVONNE K. PUIG
AKIN, GUMP, STRAUSS,
HAUER & FELD, LLP
816 Congress Avenue
Suite 1900
Austin, Texas 78701
(512) 499-6200

JACK CHAPMAN
Counsel of Record
CYNTHIA S. ANDERSON
KEMP SMITH, P.C.
221 North Kansas
Suite 1700
El Paso, Texas 79901
(915) 533-4424

Attorneys for Petitioner

APPENDIX

APPENDIX A — OPINION OF THE COURT OF APPEALS OF THE STATE OF NEW MEXICO DATED AND FILED JUNE 19, 2000

IN THE COURT OF APPEALS OF THE
STATE OF NEW MEXICO

Docket No. 19,895

KENNETH D. CRONIN and BRIGITTE CRONIN,
Husband and Wife,

Plaintiffs-Appellants,

vs.

SIERRA MEDICAL CENTER, EL PASO SOUTHWESTERN CARDIOVASCULAR ASSOCIATES, P.A., KENNETH EISENBURG, M.D., JERRY W. MILLER, M.D., FELICE L. BRUNO, M.D., and JOE KIDD, M.D.,

Defendants-Appellees,

and

RALPH PAONE, M.D., MOUNTAIN SHADOWS HOME HEALTH CARE SERVICES, and H.W. HANDY, M.D.,

Defendants.

APPEAL FROM THE DISTRICT COURT
OF DOÑA ANA COUNTY
ROBERT E. ROBLES, District Judge

* * *

Appendix A

OPINION

PICKARD, Chief Judge.

{1} Kenneth Cronin and Brigitte Cronin (Plaintiffs) filed a medical malpractice lawsuit against Sierra Medical Center, El Paso Southwestern Cardiovascular Associates, P.A., Dr. Kenneth Eisenberg, Dr. Felice Bruno, Dr. Jerry Miller, and Dr. Joe Kidd (Defendants) after Mr. Cronin (Patient) experienced certain health complications arising out of heart bypass surgery. Plaintiffs, who reside in New Mexico, traveled to Texas so that Patient could undergo the surgery. Dr. Eisenberg performed the surgery at Sierra Medical Center (Hospital). The surgery was successful; however, Patient developed a staphylococcus aureus infection in his surgical wound. Dr. Eisenberg asked Dr. Bruno and Dr. Miller to help him treat the staph infection. Both doctors agreed to do so. Dr. Bruno performed mediastinal debridement and sternal rewiring, and Dr. Miller prescribed certain antibiotics. In the course of his antibiotic treatment, Patient experienced vertigo and loss of equilibrium.

{2} Plaintiffs subsequently formed the belief that Patient's health complications were caused by Dr. Miller's failure to adequately monitor the administration of the antibiotic therapy, so they filed suit. In their complaint, Plaintiffs asserted claims of medical negligence, battery, negligent infliction of emotional distress, and loss of consortium. Plaintiffs claimed they were entitled to damages because Defendants knew or should have known that the antibiotics prescribed by Dr. Miller can cause bilateral weakness in the inner ear labyrinthine systems, which results in vertigo and

loss of equilibrium, and yet they allowed Patient to take the antibiotics until he sustained severe and permanent damage.

{3} Defendants responded to Plaintiffs' complaint by filing motions to dismiss for lack of personal jurisdiction. In their motions, Defendants claimed the trial court lacked the authority to assert personal jurisdiction over them because (1) they did not transact business in New Mexico, (2) they did not commit a tort in New Mexico, and (3) they lack minimum contacts with New Mexico such that due process considerations would be offended if the trial court were to assert personal jurisdiction over them. The trial court accepted Defendants' arguments and dismissed Plaintiffs' complaint without prejudice. Plaintiffs now appeal.

{4} For the reasons stated more fully below, we agree with the trial court that it lacked personal jurisdiction over El Paso Southwestern Cardiovascular Associates, P.A., Dr. Eisenberg, Dr. Bruno, Dr. Miller, and Dr. Kidd (Non-Hospital Defendants). Plaintiffs did not claim at the trial court level that Non-Hospital Defendants transacted business in New Mexico, so we limit our discussion to whether the trial court could assert jurisdiction over these defendants under the "commission of a tortious act" prong of our analysis. Upon doing so, we conclude that even if Non-Hospital Defendants committed a tort in New Mexico, the trial court still lacked the authority to assert personal jurisdiction over them because they lack minimum contacts with New Mexico and therefore did not commit a tortious act under our long-arm statute. However, we disagree with the trial court that it lacked personal jurisdiction over Hospital because Plaintiffs' causes of action lie within the wake of Hospital's intentional, purposeful, and

persistent transaction of business in New Mexico. We therefore affirm in part and reverse in part.

BACKGROUND

{5} Plaintiffs reside in Las Cruces, New Mexico. In November 1995, they traveled to El Paso, Texas, so that Patient could undergo heart bypass surgery at Hospital. Patient decided to have the surgery performed at Hospital after reading its business advertisements in the local telephone directory, viewing its commercials on television, and hearing it recommended to him by some of his fellow employees who apparently had received medical care there in the past. Dr. Eisenberg performed the surgery at Hospital. After recuperating at Hospital for a few days, Patient was discharged. Plaintiffs returned to Las Cruces, where Patient was scheduled to complete his rehabilitation at home with the assistance of his wife and Mountain Shadows Home Health Care Services (Home Care).

{6} Approximately one month after returning to his home in Las Cruces, Patient complained of chest pain. He returned to El Paso in order to be examined by Dr. Eisenberg. Dr. Eisenberg performed the examination in his office at El Paso Southwestern Cardiovascular Associates, P.A., which is the same professional association that employs Dr. Bruno and Dr. Kidd. The following day, Dr. Eisenberg admitted Patient for hospitalization at Hospital. Patient's surgical wound had become infected, and the purpose of hospitalizing him was to treat his infection.

{7} Dr. Eisenberg asked Dr. Bruno and Dr. Miller to help him treat Patient's staph infection. Both doctors agreed to

do so. Dr. Bruno performed mediastinal debridement and sternal rewiring, while Dr. Miller prescribed certain antibiotics to treat the infection. Dr. Miller's antibiotic prescription was utilized for the remainder of Patient's three-week stay at Hospital. Hospital's nurses monitored and administered to Patient throughout his stay at Hospital during this three-week period.

{8} At discharge, Hospital's staff arranged for home health care for Patient so that he could complete his antibiotic therapy in Las Cruces. Hospital and Dr. Miller contacted Home Care, informing it to carry out the orders of Patient's treating physicians, one of whom was Dr. Miller, who ordered the continuation of antibiotic therapy. Pursuant to these orders, Patient received antibiotic therapy at his home in Las Cruces.

{9} Approximately two weeks into his therapy at home, Patient informed Dr. Bruno that he was experiencing vertigo and loss of equilibrium. Dr. Bruno immediately ordered Home Care to discontinue the therapy upon hearing Patient's complaints. Plaintiffs subsequently formed the belief that Patient's vertigo and loss of equilibrium had been caused by Dr. Miller's failure to terminate treatment with the antibiotics, which have a known detrimental effect on the hearing organs (ototoxic effect) when used for too long of a duration, before Patient suffered severe and permanent damage to his inner ears. Plaintiffs filed a medical malpractice lawsuit against Defendants in January 1998.

Appendix A

STANDARD OF REVIEW

{10} The issue presented for our review is whether the trial court had the authority to assert personal jurisdiction over Defendants, none of whom reside in New Mexico. This is a question of law, which we review de novo. *See Campos Enters., Inc. v. Edwin K. Williams & Co.*, 1998-NMCA-131, ¶ 5, 125 N.M. 691, 964 P.2d 855. If, as here, a district court bases its ruling upon the parties' pleadings and affidavits, the applicable standard of review largely mirrors the standard that governs appeals from the award or denial of summary judgment. *See Harrell v. Hayes*, 1998-NMCA-122, ¶ 11, 125 N.M. 814, 965 P.2d 933. In this respect, both a district court and this appellate court must construe the pleadings and affidavits in the light most favorable to the complainant. *See Doe v. Roman Catholic Diocese of Boise, Inc.*, 1996-NMCA-057, 121 N.M. 738, 742, 918 P.2d 17, 21. The complainant need only make a prima facie showing that personal jurisdiction exists when a district court does not hold an evidentiary hearing. *See Tercero v. Roman Catholic Diocese of Norwich, Conn.*, 1999-NMCA-052, ¶ 12, 127 N.M. 294, 980 P.2d 77, *cert. granted*, No. 25,618 (April 17, 1999).

DISCUSSION

{11} Plaintiffs failed to serve process upon Defendants within the territorial limits of New Mexico. Nevertheless, they contend that the trial court had the authority to assert personal jurisdiction over the non-resident Defendants. In order for this contention to hold true, the conduct Plaintiffs complain of must meet a three-part test: (1) Defendants must

have done at least one of the acts enumerated in our long-arm statute, (2) Plaintiffs' causes of action must have arisen from the act or acts, and (3) Defendants must have had minimum contacts with New Mexico sufficient to satisfy constitutional due process. *See Visarraga v. Gates Rubber Co.*, 104 N.M. 143, 146, 717 P.2d 596, 599 (Ct. App. 1986).

A. *Long-Arm Statute and Causes of Action*

{12} Plaintiffs claim Defendants' conduct satisfies the requirements of our long-arm statute. *See* NMSA 1978, § 38-1-16 (1971). Section 38-1-16(A) provides that any party, whether or not a resident of New Mexico, who does one or more of our long-arm statute's enumerated acts submits to the jurisdiction of the courts of this State so long as the complainant's cause of action arises from:

> (1) the transaction of any business within this state;
>
> (2) the operation of a motor vehicle upon the highways of this state;
>
> (3) the commission of a tortious act within this state;
>
> (4) the contracting to insure any person, property or risk located within this state at the time of contracting; [or]
>
> (5) with respect to actions for divorce, separate maintenance or annulment, . . . if one

> party to the marital relationship continues to reside in the state.

Section 38-1-16(A). The parties agree that based on the facts presented in this case, we need only consider whether Defendants' conduct falls within subsections (1) and (3) of our long-arm statute.

1. ***Business***

{13} Plaintiffs claim Defendants transacted business in New Mexico. The determination of whether a party has transacted business within the meaning of our State's long-arm statute must be made on a case-by-case basis. *See Telephonic, Inc. v. Rosenblum*, 88 N.M. 532, 534, 543 P.2d 825, 827 (1975) (stating that the resolution of this issue is to "be determined by the facts in each case"). It appears from the record that Plaintiffs raised this claim only as to Hospital at the trial court level. We restrict our analysis accordingly. *See Beneficial Fin. Co. v. Alarcon*, 112 N.M. 420, 424, 816 P.2d 489, 493 (1991) (ruling that matters not properly before the trial court cannot be considered for the first time on appeal).

{14} Plaintiffs contend that Hospital transacted business in New Mexico because it placed advertisements in several New Mexico telephone directories, produced television commercials that could be and were viewed by New Mexico customers, and previously performed health care services for other New Mexico customers. In support of their contention, Plaintiffs provided the trial court with copies of Hospital's written ads, which appeared in the white and

yellow pages of the Roswell, Alamogordo, Silver City, and Las Cruces telephone directories for the years 1994 to 1997. Plaintiffs also produced Patient's affidavit in which he stated that he was aware of and had seen Hospital's commercial advertisements on his television. In his affidavit, Patient averred that he decided to have the surgery performed at Hospital based on its general solicitations, as well as on the recommendation from some of his fellow employees who apparently had received medical care at Hospital in the past.

{15} We agree with Plaintiffs that the evidence they produced at the trial court level supports their contention that Hospital intentionally initiated commercial activities in New Mexico for the purpose of realizing pecuniary gain. *See Kathrein v. Parkview Meadows, Inc.*, 102 N.M. 75, 76, 691 P.2d 462, 463 (1984) (finding that defendant's advertisements in yellow pages, coupled with a letter to the plaintiff, constituted the transaction of business); *Frazer v. McGowan*, 502 A.2d 905, 909-10 (Conn. 1986) (ruling that Connecticut had jurisdiction over nonresident hospital that placed ads in yellow pages of Connecticut telephone directories). This determination is further compelled by the fact that Patient was not the first New Mexico resident to receive medical care at Hospital on account of its commercial activities within this State. *See Roberts v. Piper Aircraft Corp.*, 100 N.M. 363, 367-68, 670 P.2d 974, 978-79 (Ct. App. 1983) (ruling that nonresident defendant who solicited business by advertising in a trade journal that is circulated in New Mexico and who previously had performed work for other New Mexico residents availed itself of the privilege of conducting business in New Mexico); *Moore v. Graves*, 99 N.M. 129, 132-33, 654 P.2d 582, 585-86 (Ct. App. 1982) (same).

{16} Plaintiffs also contend that their causes of action arise from Hospital's transaction of business in New Mexico. This contention is based on Plaintiffs' allegation that, but for Hospital's solicitations, Patient would not have sought treatment at Hospital nor would he have endured certain health complications arising from Dr. Miller's prescription and Defendants' negligent failure to monitor the administration of potentially ototoxic antibiotics. Again, we agree with Plaintiffs. *See Kathrein*, 102 N.M. at 77, 691 P.2d at 464 (finding that complainant would not have visited her husband at out-of-state alcohol treatment center, where she allegedly suffered emotional and psychological damages, if not for nonresident defendant's efforts to encourage her to make that visit); *Winward v. Holly Creek Mills, Inc.*, 83 N.M. 469, 472, 493 P.2d 954, 957 (1972) (ruling that a cause of action arises out of a defendant's transaction of business for purposes of our long-arm statute when the cause of action lies "within the wake of defendant's commercial activity").

2. *Tort*

{17} Plaintiffs contend that Defendants committed a tortious act in New Mexico. This contention is based on Plaintiffs' theory that, although Defendants' negligent conduct may have occurred in Texas, a tort is not complete until there is injury. *See Peralta v. Martinez*, 90 N.M. 391, 393, 564 P.2d 194, 196 (Ct. App. 1977). Plaintiffs assert that Patient did not sustain a cognizable injury until he began to experience vertigo and loss of equilibrium. Inasmuch as Patient experienced these health problems in New Mexico, and not in Texas, Plaintiffs assert that the allegedly tortious act occurred in New Mexico. *See Roberts*, 100 N.M. at 366, 670

P.2d at 977 (ruling that when negligent acts occur outside New Mexico which cause injury within New Mexico, a "tortious act" has been committed within this State); *Beh v. Ostergard*, 657 F. Supp. 173, 175-76 (D.N.M. 1987) (ruling that a "tortious act" occurred in New Mexico when complainant allegedly developed certain health complications in New Mexico from the negligent implantation of an intrauterine contraceptive device in California, because a tort is not complete until a complainant endures a cognizable injury).

{18} Defendants argue that we should reject Plaintiffs' continuing tort theory because it is "based largely on the outdated 'place of wrong' choice of law rule." We decline the opportunity to address Defendants' contention because our Supreme Court continues to endorse the place-of-the-wrong rule. *See Torres v. State*, 119 N.M. 609, 613, 894 P.2d 386, 390 (1995) (applying place-of-the-wrong rule); *State v. Wilson*, 116 N.M. 793, 796, 867 P.2d 1175, 1178 (1994) (ruling that this Court is bound by direct Supreme Court precedent).

{19} Defendants also argue that they did not, either individually or collectively, commit a tortious act in the first place. For purposes of this discussion only, we reject Defendants' argument and assume without deciding that they committed a tort in New Mexico and that Plaintiffs' sustained damages therefrom. We do so for two reasons. First, as stated above, Plaintiffs' causes of action arise out of Hospital's intentional, purposeful, and persistent transaction of business in New Mexico. It is therefore unnecessary for us to consider whether Hospital's conduct satisfies another subsection of our long-arm statute. *See Visarraga*, 104 N.M. at 146, 717

P.2d at 599 (stating that in order to satisfy the requirements of our long-arm statute, a non-resident defendant need only complete one of the statute's enumerated acts that gives rise to the plaintiff's cause of action). Second, as stated below, we conclude that even if Non-Hospital Defendants committed a tortious act that caused Plaintiffs damages in New Mexico, the trial court would still lack the authority to assert jurisdiction over them because they lack minimum contacts with this State. *See Tarango v. Pastrana*, 94 N.M. 727, 728, 616 P.2d 440, 441 (Ct. App. 1980) (holding that even if the defendants committed a tort, the trial court still lacked personal jurisdiction over them because they lacked minimum contacts with New Mexico).

{20} The proper two-step analysis for determining issues of personal jurisdiction is set forth in *Aetna Casualty & Surety Co. v. Bendix Control Division*, 101 N.M. 235, 680 P.2d 616 (Ct. App. 1984), wherein we stated:

> In reviewing challenges to jurisdiction under our state's long-arm statute, two levels of analysis are necessary. First, the court must determine whether plaintiff has alleged an event in New Mexico, *see* Section 38-1-16, so as to subject defendant to that statute. Secondly, if the threshold requirements have been met, the court must determine whether the exercise of personal jurisdiction over the defendant is consistent with the requirements of due process.

Id. at 240, 680 P.2d at 621 (citations omitted); *see Tarango*, 94 N.M. at 728, 616 P.2d at 441 (stating that the question of

personal jurisdiction over non-resident defendants involves more than the technical " 'transaction of any business' " or the technical " 'commission of a tortious act' " within New Mexico). It is to the minimum contacts portion of that analysis that we now turn.

B. *Minimum Contacts*

{21} In order for a non-resident defendant to be subjected to the personal jurisdiction of an out-of-state court, he must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citations omitted); *accord Telephonic, Inc.*, 88 N.M. at 534, 543 P.2d at 827. "A central factor in determining whether these 'minimum contacts' were established is the degree to which defendant purposefully initiated its activity within the State." *Customwood Mfg., Inc. v. Downey Constr. Co.*, 102 N.M. 56, 57, 691 P.2d 57, 58 (1984). "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its law." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *accord Tercero*, 1999-NMCA-052, ¶ 18.

{22} For the reasons stated above, we believe that Hospital established certain minimum contacts with this State by intentionally, purposefully, and persistently soliciting the business of New Mexico customers. It placed advertisements in several New Mexico telephone directories, produced television commercials that could be and were viewed by

potential customers in New Mexico, and previously performed health care services for other New Mexico customers. Hospital's advertisements support the conclusion that it intentionally initiated commercial activities in New Mexico for the purpose of realizing pecuniary gain. *See Hanson*, 357 U.S. at 253; *Tercero*, 1999-NMCA-052, ¶ 16.

{23} We believe, however, that Non-Hospital Defendants lack minimum contacts with New Mexico because they did not purposefully initiate any activities in this State. This is true even though technically they may have committed a tortious act in New Mexico. *See Tarango*, 94 N.M. at 728, 616 P.2d at 441 (holding that even if the defendants committed a tort in New Mexico, the trial court still lacked personal jurisdiction over them because they lacked minimum contacts with this State).

{24} In *Valley Wide Health Servs., Inc. v. Graham*, 106 N.M. 71, 72-73, 738 P.2d 1316, 1317-18 (1987), the New Mexico Supreme Court addressed the issue of whether a Colorado physician had subjected himself to the jurisdiction of our state courts by giving a New Mexico patient allegedly negligent medical advice in a telephone call. Answering in the negative, our Supreme Court stated that prior to the physician's telephone call, a doctor-patient relationship had already been established in Colorado. *See id.* at 73, 738 P.2d at 1318. The Supreme Court determined that the physician had not purposely initiated activity in this State, but instead had simply responded to his patient's call for help as the patient's treating physician. *See id.* at 72-73, 738 P.2d at 1317-18. It was mere happenstance that the patient lived in New Mexico.

{25} In our view, the case at bar falls under the rubric set forth in *Valley Wide Health Services, Inc.*. Although *Valley Wide Health Services, Inc.* involved a phone call and this case involved discharge instructions including the continuation of the antibiotic therapy that allegedly hurt Patient, the Supreme Court's underlying rationale in *Valley Wide Health Servs., Inc.* still holds true. It is determinative that other than Hospital, Defendants acted in New Mexico only after Patient had unilaterally initiated a doctor-patient relationship in Texas. This type of action does not constitute purposeful action. As one court so aptly put it:

> The case at bar does not involve a product which was deliberately or foreseeably shipped into the forum state's markets. It focuses on a service, not performed in the forum state but in a foreign state, rendered after the plaintiff voluntarily traveled to the foreign state so that he could benefit from that service which was available there only.
>
> When one seeks out services which are personal in nature, such as those rendered by attorneys, physicians, dentists, hospitals or accountants, and travels to the locality where he knows the services will actually be rendered, he must realize that the services are not directed to impact on any particular place, but are directed to the needy person himself. While it is true that the nature of such services is that if they are negligently done, their consequences will thereafter be felt wherever the client or patient

may go, it would be fundamentally unfair to permit a suit in whatever distant jurisdiction the patient may carry the consequences of his treatment, or the client the consequences of the advice received.

Unlike a case involving voluntary interstate or international economic activity, which is directed at the forum state's markets, the residence of a recipient of personal services rendered elsewhere is irrelevant and totally incidental to the benefits provided by the defendant at his own location. It is clear that when a client or a patient travels to receive professional services without having been solicited (which is prohibited by most professional codes of ethics), then the client, who originally traveled to seek services apparently not available at home, ought to expect that he will have to travel again if he thereafter complains that the services sought by him in the foreign jurisdiction were therein rendered improperly.

Any other rule would seem to be not only fundamentally unfair, but would inflict upon the professions the obligation of traveling to defend suits brought in foreign jurisdictions, sometimes very distant jurisdictions, there brought solely because the patient or client upon his return to his own home decided to sue at home for services sought by himself abroad.

Gelineau v. New York Univ. Hosp., 375 F. Supp. 661, 667 (D.N.J.1974) (citation and footnote omitted); *Tarango*,

94 N.M. at 729-30, 616 P.2d at 442-43 (quoting the same passage from *Gelineau*).

{26} We acknowledge Plaintiffs' argument that their case differs from *Gelineau* and *Tarango* in that they allege a continuing tort, whereas the other cited cases involve a discrete set of services that could be said to have been rendered strictly outside the patient's home state. This point notwithstanding, we fail to see why the case at bar falls outside the purview of *Valley Wide Health Services, Inc.*. When a person unilaterally seeks specialty care, which Patient no doubt did by traveling to Texas to undergo heart bypass surgery and then again to receive treatment for his staph infection, follow-up care, including medical prescriptions, are almost sure to follow. This type of follow-up care, without any evidence that the non- resident physician reached into the forum state in order to attract the patient's business, simply does not constitute the purposeful availment that is both contemplated in and required by our due process analysis. Nor are we impressed by Patient's conclusory affidavit that all doctors "provided medical services to me . . . at Mountain Shadows." The 600-page record in this case is replete with case notes, discharge summaries, and specific information, and all it shows is the transfer of follow-up care, including prescriptions, to New Mexico. *See Rivera v. Trujillo*, 1999-NMCA-129, ¶ 8, 128 N.M. 106, 990 P.2d 219.

{27} The citizens of New Mexico would be ill-served if we were to establish a rule that effectively compelled non-resident specialist physicians to prescribe only so much medicine as would get patients home. *See Prince v. Urban*, 57 Cal. Rptr. 2d 181, 186 (Ct. App. 1996). We instead choose

to reiterate the longstanding rule that a non-resident defendant will not be subjected to the jurisdiction of the courts of this State unless his or her activities are properly characterized as purposeful availment, rather than incidental. *See Valley Wide Health Servs., Inc.*, 106 N.M. at 72-73, 738 P.2d at 1317-18.

CONCLUSION

{28} For the reasons stated, we affirm in part and reverse in part and remand with instructions to the trial court to reinstate Plaintiffs' complaint against Hospital only.

{29} **IT IS SO ORDERED.**

s/ Lynn Pickard
LYNN PICKARD, Chief Judge

WE CONCUR:

s/ Rudy S. Apodaca
RUDY S. APODACA, Judge

s/ Michael D. Bustamante
MICHAEL D. BUSTAMANTE, Judge.

APPENDIX B — JUDGMENT OF THE THIRD JUDICIAL DISTRICT, COUNTY OF DONA ANA, STATE OF NEW MEXICO DATED AND FILED SEPTEMBER 30, 1998

THIRD JUDICIAL DISTRICT
COUNTY OF DONA ANA
STATE OF NEW MEXICO

NO. CV-98-84
JUDGE ROBERT E. ROBLES

KENNETH D. CRONIN and BRIGITTE CRONIN, husband and wife,

Plaintiffs,

vs.

SIERRA MEDICAL CENTER; EL PASO SOUTHWESTERN CARDIOVASCULAR ASSOCIATES; KENNETH EISENBERG, M.D.; JERRY W. MILLER, M.D.; FELICE L. BRUNO, M.D.; JOE KIDD, M.D.; RALPH PAONE, M.D.; MOUNTAIN SHADOWS HOME HEALTH CARE SERVICES, H.W. HANDY, M.D.,

Defendants.

JUDGMENT

The Court has considered the Defendants', TENET HOSPITALS LIMITED, a Texas Limited Partnership doing business as Sierra Medical Center, (incorrectly sued as Sierra Medical Center), EL PASO SOUTHWESTERN

Appendix B

CARDIOVASCULAR ASSOCIATES, P.A., KENNETH EISENBERG, M.D., JERRY MILLER, M.D., FELICE L. BRUNO, M.D., AND JOE KIDD, M.D., Motions to Dismiss for Lack of Personal Jurisdiction. After considering the pleadings, the evidence, and the arguments of counsel, the Court finds the Motions to be well taken.

THEREFORE, IT IS ORDERED that Defendants Rule 1-012(b)(2) Motions to Dismiss for Lack of Personal Jurisdiction are GRANTED and that Plaintiffs' causes of action against Defendants, TENET HOSPITALS LIMITED, a Texas Limited Partnership doing business as Sierra Medical Center, (incorrectly sued as Sierra Medical Center), EL PASO SOUTHWESTERN CARDIOVASCULAR ASSOCIATES, P.A., KENNETH EISENBERG, M.D., JERRY MILLER, M.D., FELICE L. BRUNO, M.D., AND JOE KIDD, M.D., are DISMISSED WITHOUT PREJUDICE. Since multiple, but fewer than all, parties are being dismissed, this judgment shall be a final judgment pursuant to Rule 1-054(C)(2) NMRA 1998.

SIGNED this 30th of Sept. 1998.

s/ Robert E. Robles
Robert E. Robles
JUDGE PRESIDING

APPENDIX C — ORDER OF THE SUPREME COURT OF THE STATE OF NEW MEXICO DENYING PETITION FOR WRIT OF CERTIORARI DATED SEPTEMBER 13, 2000

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
Wednesday, September 13, 2000

NO. 26,515

KENNETH D. CRONIN and BRIGITTE CRONIN, husband and wife,

Plaintiffs-Respondents,

vs.

SIERRA MEDICAL CENTER,

Defendant-Petitioner.

ORDER

This matter coming on for consideration by the Court upon petition for writ of certiorari, and the Court having considered said petition and response, and being sufficiently advised, Chief Justice Pamela M. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is **denied** in Court of Appeal number **19895.**

Appendix C

(SEAL)

WITNESS, The Hon. Pamela B. Minzner, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 13th of September, 2000.

s/ Jane Gurule
Jane Gurule, Chief Deputy

APPENDIX D — ORDER OF THE SUPREME COURT OF THE STATE OF NEW MEXICO DENYING MOTION FOR REHEARING DATED OCTOBER 11, 2000

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
October 11, 2000

NO. 26,515

KENNETH D. CRONIN and BRIGITTE CRONIN, husband and wife,

Plaintiffs-Respondents,

vs.

SIERRA MEDICAL CENTER,

Defendant-Petitioner.

ORDER

WHEREAS, This matter came on for consideration by the Court upon Motion for rehearing, and the Court having considered said motion and brief in support, and being sufficiently advised, Chief Justice Pamela B. Minzner, Justice Joseph F. Baca, Justice Gene E. Franchini, Justice Patricio M. Serna and Justice Petra Jimenez Maes concurring;

NOW, THEREFORE, IT IS ORDERED that the motion for rehearing hereby is DENIED.

IT IS SO ORDERED.

Appendix D

WITNESS, The Hon. Pamela B. Minzner, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 11th day of October, 2000.

(SEAL)

s/ Madeline Garcia
Madeline Garcia, Deputy Chief